

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		:	
VICTOR AHAIWE,		:	21cv8768 (DLC)
		:	20cr179-11 (DLC)
Petitioner,		:	
		:	<u>ORDER</u>
-v-		:	
		:	
UNITED STATES OF AMERICA,		:	
		:	
Defendant.		:	
-----X		:	

DENISE COTE, District Judge:

Victor Ahaiwe, who is currently incarcerated at the Metropolitan Detention Center in Brooklyn, New York, brings this pro se petition for a writ of habeas corpus under 28 U.S.C. § 2255 challenging his June 10, 2021 conviction in this Court. Ahaiwe has not yet been sentenced. By Order dated October 22, 2021, the Court scheduled a conference for November 3, 2021 to conduct an allocution with Ahaiwe to determine whether he knowingly and voluntarily waives the right to counsel and to set a schedule for the filing of sentencing submissions and schedule sentence. That conference has been adjourned due to Ahaiwe's quarantine.

A § 2255 motion is not the proper vehicle to challenge a federal conviction for a federal prisoner who has not yet been sentenced. See Stantini v. United States, 140 F.3d 424, 426 (2d Cir. 1998). The Court therefore denies the motion brought under

§ 2255 without prejudice. Ahaiwe must wait until after he is sentenced to challenge the validity of his judgment of conviction and sentence. When that time comes, he may file a direct appeal in the United States Court of Appeals for the Second Circuit, and if his conviction is affirmed, he may seek collateral relief by filing a motion under 28 U.S.C. § 2255. Accordingly, it is hereby


ORDERED that Ahaiwe's petition is denied.

IT IS FURTHER ORDERED that Ahaiwe has not made a substantial showing of a denial of a federal right and, therefore, a certificate of appealability shall not be granted. Hoffler v. Bezio, 726 F.3d 144, 154 (2d Cir. 2013); Tankleff v. Senkowski, 135 F.3d 235, 241 (2d Cir. 1998); Rodriguez v. Scully, 905 F.2d 24, 24 (2d Cir. 1990). Pursuant to 28 U.S.C. § 1915(a)(3), any appeal would not be taken in good faith. Coppedge v. United States, 369 U.S. 438, 445 (1962).

IT IS FURTHER ORDERED that the Clerk of Court shall mail a copy of this Order to Ahaiwe, note mailing on the docket, and close case 21cv8768.

SO ORDERED:

Dated: New York, New York
November 9, 2021



DENISE COTE
United States District Judge